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<u>PATENT</u>

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of)	
)	**Before the**
Applicants: Howard Rafal et al.)	**Board of Patent Appeals**
)	**and Interferences**
Serial No. 09/778,281)	
)	**Examiner Victor Lesniewski**
Filed: February 7, 2001)	**Art Unit 2155**
)	
Title: Methods and apparatus for creating and hosting)	
customized virtual parties via the Internet)	

Commissioner for Patents
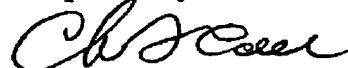P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

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I certify that the attached APPELLANTS BRIEF (16 PAGES), PETITION FOR A TIME EXTENSION (1 PAGE) AND CREDIT CARD FORM (1 PAGE) are being transmitted via facsimile to the central facsimile number of United States Patent and Trademark Office, (571) 273-8300, on July 26, 2005.

Respectfully submitted,

Dated: July 26, 2005

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Before the
Board of Patent Appeals
and Interferences

Examiner Victor D. Lesniewski
Art Unit 2155

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

APPELLANTS' BRIEF

Real party in interest

The real party in interest is Anyparty.com, a corporation having its principal place of
business at One Devonshire Place, Boston, Massachusetts, the sole owner of the present
application.

07/27/2005 TL0111   00000047 09778281
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Related appeals and interferences

None.

Status of claims

Claims 1-12 are pending and have been finally rejected and are appealed.

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Status of amendments

An amendment was filed on April 26, 2005, subsequent to the final rejection, to correct limitations in the claims that lacked antecedent basis. An advisory action mailed on May 19, 2005 indicated that the amendment had been entered and that the amended claims overcame the rejection of claim 8 under §112 but that all claims remained rejected under §103 as stated in the earlier final rejection.

Summary of claimed subject matter

The present invention takes the form of a method defined as a combination of steps.

Rejected claims 1-12 are set forth below. In each claim, each element that is expressed as a step for performing a specified function is accompanied by a citation to representative portions of appellants' specification and drawings that describe the corresponding structure or acts. These citations appear in italics within the brackets following each recitation. These citations, as well as citations to appellants' disclosure appearing elsewhere in this brief, identify representative (and typically simplified) portions of appellants' specification, and should not be interpreted to suggest that no other passages in the application describe structure or acts that correspond to a given claimed step.

1. The method of using the Internet to create and host a customized online gathering of participants which occurs at a scheduled time comprising, in combination, the steps of:

providing at least one server computer connected to the Internet for communicating with a plurality of client computers operated by users which are also connected to the Internet, *[page 3, lines 9-22; page 18, line 5 to page 19, line 8; Fig. 2]*

storing at said server computer:

a)　template data defining one or more template web pages, each of said template web pages implementing a predetermined activity in which said users may participate as part of said online gathering, *[page 21, lines 4-10, page 22, line 14 to page 23, line 28]*

b)　an identification of said first user as the host of said online gathering, *[page 3, lines 17-22; page 6, lines 5-8; page 8, line 23 to page 9, line 21; Fig. 1 at 104]*

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c)   a guest list accepted from said first user identifying a plurality of other invited users, *[page 4, lines 7-10; page 9, lines 22-28; Fig 1 at 115]*

d)   a specification of a scheduled time or scheduled time range during which the online gathering will occur, and *[page 3, line 23; page 5, line 19; page 10, lines 1-6; Fig. 1 at 116]*

e)   customization data accepted from said first user, *[page 3, lines 19-21; page 4, lines 3-17; page 10, line 17 to page 12, line 27; page 25, line 1 to page 26, line 12]*

combining said template data and said customization data to create customized web pages which together implement said customized online gathering, *[page 21, lines 4-10; page 22, line 10 to page 23, line 12]*

establishing at said scheduled time or during said scheduled time range an authorized connection via the Internet between said server computer and each of said invited users that choose to participate in said gathering and, *[page 9, lines 5-10; Fig. 1 at 102, 107 and 108B]*

responding to requests received from any given one of said invited users during said online gathering by transmitting to said given user a requested one of said customized Web pages. *[page 14, lines 17-26; page 26, line 14 to page 28, line 7]*

2. The method as set forth in claim 1 wherein said guest list includes the email addresses of at least some of said other users and further including the step performed before said scheduled time or scheduled time range of transmitting an invitation to said gathering to each of said email addresses. *[page 10, lines 6-16; page 25, lines 9-15]*

3. The method as set forth in claim 1 wherein said customization data accepted from said first user includes the designation of a gathering type and wherein, in response to said designation of said gathering type, said server computer automatically establishes a set of predetermined default values for said customization data which are combined with said template data to produce preliminary customized pages. *[page 4, lines 10-14; page 5, lines 22-28; page 10, line 17-26]*

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4. The method as set forth in claim 3 wherein said gathering type is designated by the combination of an occasion type and a theme associated with said occasion type. *[page 10, line 17 to page 11, line 12]*

5. The method as set forth in claim 3 further including the steps of accepting from said first user replacement attribute values which may be substituted for particular ones of said default values to modify said preliminary customized pages. *[page 4, lines 12-13; page 5, lines 22-26; page 10, lines 17-26]*

6. The method as set forth in claim 1 wherein said at least one server computer comprises a first server which acts as an application service provider for presenting said Web pages to users who access at least some of said Web pages using addresses supplied by a collaborating server computer. *[page 16, line 13 to page 18, line 2]*

7. The method as set forth in claim 1 wherein at least a given one of said template web pages implements an activity in which said invited users may communicate with one another, said method including the further steps of accepting contributed data from one or more of said other invited users, storing said contributed data on said server computer, and thereafter displaying at least selected contributed data as part of said given one of said Web pages. [page 4, lines 13-17; page 6, lines 9-11; page 13, line 19 to page 14, line 15]

8. The method of creating and hosting scheduled online gatherings of participating users which comprises, in combination, the steps of:

   providing a web server for exchanging information via the Internet with a plurality of remotely located web browsers each of which is operated by one of said users; *[page 3, lines 9-22; page 18, line 5 to page 19, line 8; Fig. 2]*

   storing template data accessible to said web server, said template data including a plurality of template web pages at least one of which implements an interactive activity in which said users may participate; *[page 21, lines 4-10, page 22, line 14 to page 23, line 28]*

   accepting an application from a particular one of said users to host one or more of said online gatherings, and responsive to said application designating said particular one of said users

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as the host of at least at least one specific online gathering; *[page 3, lines 17-22; page 6, lines 5-8; page 8, line 23 to page 9, line 21; Fig. 1 at 104]*

accepting from said host customization data for modifying or supplementing one or more of said template web pages to produce customized web pages to be transmitted from said Web server to said users during said specific online gathering, *[page 3, lines 19-21; page 4, lines 3-17; page 10, line 17 to page 12, line 27; page 25, line 1 to page 26, line 12]*

accepting from said host a designation of the time or times when said specific online gathering is scheduled to occur; *[page 3, line 23; page 5, line 19; page 10, lines 1-6; Fig. 1 at 116]*

prior to said time or times when said specific online gathering is scheduled to occur, transmitting an invitation to participate in said specific online gathering to each of said users, said invitation including the specification of said time or times and the URL of at least one of said Web pages; *[page 10, lines 6-16; page 25, lines 9-15]*

at said time or times designated by said host, employing said Web server to host said online gathering by making said customized web pages available to said users. *[page 14, lines 17-26; page 26, line 14 to page 28, line 7]*

9. The method of creating and hosting customized online gatherings as set forth in claim 8 further the steps, performed prior to said time or times when said specific online gathering is to occur, of:

accepting from said host guest list data including the email addresses of a plurality of guest users who are to be invited to participate in said specific online gathering, and *[page 10, lines 6-16]*

thereafter transmitting said invitation to attend said specific online gathering to each of said email addresses. *[page 25, lines 9-15]*

10. The method of creating and hosting customized online gatherings as set forth in claim 8 wherein said web server operates in collaboration with one or more other web servers. *[page 16, line 13 to page 18, line 2]*

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11. The method of creating and hosting customized online gatherings as set forth in claim 8 wherein said customization data includes the designation of a chosen theme for said specific online gathering and wherein said customized web pages are selected from said plurality of said template web pages in accordance with said designation to implement said chosen theme for said online gathering. *[page 10, line 17 to page 11, line 12]*

12. The method of creating and hosting customized online gatherings as set forth in claim 8 wherein said customization data includes the designation of one or more of said interactive activities to be made available to said participating users as part of said specific online gathering. *[page 26, line 14 to page 28, line 7].*

Grounds of rejection to be reviewed on appeal

In the Office Action mailed on January 26, 2005, the Examiner finally rejected claims 1, 2, 6-10 and 12 under 35 U.S.C. §103(a) as being directed to subject manner which the Examiner deemed to be obvious in view of the teaching of Tatham et al. Patent 6,223,177 (hereinafter "Tatham") considered in view of Maurille Patent 6,484,196 (hereinafter "Maurille"). Claims 3-5 and 11 were rejected under 35 U.S.C. §103(a) as being directed to subject manner which the Examiner asserts to be obvious in view of the teaching of Tatham and Maurille, as applied above, and further in view of Sluiman et al. Patent 6,590,589 (hereinafter "Sluiman").

The following grounds for the final rejection are presented for review:

Ground 1 (claims 1-12): The Examiner contends, in section 18 on page 5, that Tatham describes storing at the server computer template data defining one or more template web pages, each of said template web pages implementing a predetermined activity in which users may participate as part of said online gathering, citing Tatham at col. 4, lines 55-60.

Ground 2 (claims 1-12): The Examiner contends, in section 18 on page 5, that Tatham describes combining template data that defines template web pages and customization data accepted from the host to create customized web pages, citing Tatham at col. 4 at lines 28-33 and 55-60.

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Ground 3 (claims 1-12): The Examiner concedes that Tatham does not explicitly describe specifying a scheduled time or a scheduled time range in which an online gathering would occur but asserts, at page 4, section16, of the final rejection, that it would have been obvious to modify the system of Tatham by adding the ability to specify a scheduled time as provided by Maurille.

Ground 4 (claims 3-5 and 11): The Examiner concedes that neither Tatham nor Maurille explicitly describe the designation of certain types of activities, the automatic insertion of default values, or the replacement of default values by the user; however, the Examiner contends that it would have been obvious to modify the proposed combination of Tatham and Maurille by incorporating the ability to establish default values in templates and the ability of the user to modify these values later as taught by Sluiman.

Ground 5 (claims 6 and 10): The Examiner contends, on page 6, that Maurille describes a system in which the web server that implements the online gathering acts as an application service provider which operates in collaboration with one or more other web servers, citing Maurille at col. 5, line 55 through col. 6, line 12.

Argument

The applicable law

All of the appealed claims are method claims directed to a combination of elements expressed as steps for performing specified functions without the recital of structure, material, or acts in support thereof. By statute, 35 U.S.C. §112, sixth paragraph, "such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." *In re Donaldson Company, Inc.* 16 F.3d 1189, 29 U.S.P.Q.2d 1845 (Fed. Cir 1994).

In the preceding section of this Brief entitled "Summary of claimed subject matter," appellants have specified, for each element of each claim, those portions of appellants' specification and drawings which describe corresponding structures and acts for performing each recited method step. As detailed below, the cited references relied upon by the Examiner, whether considered singly or in combination, fail to disclose or suggest an equivalent to the

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novel method for using the Internet to create and host a customized online gathering of
participants which occurs at a scheduled time that has been disclosed and claimed by appellants.

The Examiner's final rejection should be reversed for each of the five reasons presented
below.

Ground 1 (claims 1-12)

The final rejection of all claims was based, in part, on the assertion that Tatham describes
a server computer which stores template data defining one or more template web pages each of
which implement a predetermined activity in which users may participate as part of an online
gathering. The Examiner relies on a passage in Tatham at col. 4, lines 55-60, which states that
the user is provided with a "workgroup creation template" which is completed by the user.
Tatham nowhere discloses or suggests that this template is a web page template used to
implement a predetermined activity in the online gathering as claimed. Indeed, as Tatham makes
clear in at col. 4, lines 55 – 65, the "workgroup creation template" is used to accept a name of the
workgroup being created, the number and addresses of group members, the types of applications
which are to be utilized during the project, and a name for the dedicated site to be created.
Thus, one skilled in the art would assume that Tatham's work creation template is likely some
kind of fill-in-the-blanks form that is completed by the user in order to enter data needed to
create a workgroup, and is not a template web page that implements one of the activities in
which users participate during a scheduled online gathering as claimed.

As described in appellants' specification at page 21, lines 4-10, the use of a template
pages for implementing the customizable online gathering provides significant advantages. One
of which is the ability to modify the template web page by combining it with customization data
to create customized web pages as discussed next.

Ground 2 (claims 1-12): The Examiner contends, in section 18 on page 5, that Tatham
describes combining template data that defines template web pages and customization data
accepted from the host to create customized web pages, citing Tatham at col. 4 at lines 28-33 and
55-60.

But neither of these cited passages says anything at all about web page templates, or
combining web page templates with customization data supplied by the host to produce
customized web pages as claimed. The Tatham workgroup creation template 170 is used to

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accept data for creating a new workgroup, including designating the members of that work group, giving the workgroup and the site where it may be found names, and defining the application programs that members of the new workgroup can access, but there is no suggestion anywhere that the workgroup creation template is modified in any way, let alone by combining customization data supplied by user to produce customized web pages as claimed.

The manner in which template data is modified by customization data supplied by a user is explained in appellants' specification at page 22, line 19 to page 23, line 27. Nothing which does the same thing in the same way to achieve the same result is described by Tatham. Thus, the Tatham's workgroup creation template is plainly not the equivalent of the structure and function disclosed by appellants and cannot form a proper basis for the Examiner's rejection of independent claims 1 and 8.

Ground 3 (claims 1-12): The Examiner concedes that Tatham does not explicitly describe specifying a scheduled time or a scheduled time range in which an online gathering would occur but asserts, at page 4, section 16, of the final rejection, that it would have been obvious to modify the system of Tatham by adding the ability to specify a scheduled time as provided by Maurille.

First, it is submitted that one skilled in the art would seek to modify the Tatham system by constraining a workgroup's lifetime to a schedule rather than allowing the workgroup to operate until its creator decides it is no longer needed (see Tatham, col. 4, line 38). On the other hand, it is plainly desirable that applications which provide conferencing be able to set up a conference for a particular time in advance. Thus, if one skilled in the art wished to make scheduled conferencing as taught by Maurille available to workgroup members, that would be done by adding an scheduled conferencing application as one of the available applications, like bulletin board or chat room applications, that Tatham explains at col. 6, line 9 to col. 7, line 11.

But adding a scheduled conferencing application to the set of applications Tatham makes available would not yield the appellants' invention as claimed. Applicant's claims recite a system which hosts an online gathering in which one or more activities are each defined by template web pages that can be customized. Tatham discloses no mechanism for customizing individual activities, and Maurille describes no way to customize the scheduled conferencing application. Tatham teaches only the ability to create workgroup that is customized in the sense

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that it has a name, a site name, a set of participants, and a set of activities that can be selected by the workgroup creator. There is mechanism for using customizable template web pages to customize individual activities. In the Tatham workgroup system, individual activities are implemented by application software which a workgroup member can access without providing individual copies of the application software (see Tatham, col. 5, lines 31-34). There is no suggestion anywhere in Tatham that the individual applications are customized in any way, let alone using the specific method of combining stored web page template data with customization data as claimed.

Thus, while the scheduled conferencing capability of Maurille could be added to the workgroup creation system taught by Tatham, the end result would not be a method for holding an online gathering consisting of individually customized activities as claimed by appellants, but rather a method for creating a workgroup that exists for an unscheduled period until its creator decides it is no longer needed (see Tatham, col. 4, line 38) where the created workgroup could give its members the ability to access an application program (such as the one taught by Maurille) for holding a scheduled conference. That scheduled conference would in no sense be a scheduled customizable online gathering of the type disclosed and claimed by applicant.

Ground 4 (claims 3-5 and 11): The Examiner concedes that neither Tatham nor Maurille explicitly describe the designation of certain types of activities, the automatic insertion of default values, or the replacement of default values by the user; however, the Examiner contends that it would have been obvious to modify the proposed combination of Tatham and Maurille by incorporating the ability to establish default values in templates and the ability of the user to modify these values later as taught by Sluiman.

It is submitted that the attempt to remedy the deficiencies of Tatham and Maurille by resorting to the teaching of Sluiman is hindsight reconstruction of the appellants' invention by concocting a combination that is nowhere suggested by any of the references.

Rejected claims 3-5 are directed to methods for simplifying the task of supplying customization data to be combined with template web pages to produce customized web pages that implement the individual activities made available to participants at a scheduled online gathering. As discussed above, neither Tatham nor Maurille disclose anything like that, so neither system has a need for a method for simplifying the process of providing the

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customization data. Hence one skilled in the art, given the Tatham and Maurille teachings, would have no reason to look elsewhere for a solution to a problem that doesn't exist in the systems described by those teachings.

Rejected claim 3 states that the customization data supplied by a user can include a designation of a gathering type, to which the server responds by automatically establishing a set of default values for the customization data which can then be combined with the template data to produce preliminary customized pages.

One skilled in the art would not be lead to modify Tatham to create something like that. Tatham does not describe a system that deals with, or needs to deal with, "gathering types," nor does Maurille or Sluiman. Nothing but appellants' disclosure suggests that, by specifying a "gathering type," a set of default values might be usefully produced that could be combined with a web page template to produce a preliminary customized web page for individual activities.

The Examiner's concession that the words "occasion" and "theme" are not explicitly used in Sluiman is a gross understatement. Sluiman's method of simplifying the insertion of data into a template to customize a macro instruction by using prompts to request data values from the user has no relevance to the subject matter claimed.

The cited passage at col. 9, lines 35-47 of Sluiman does not describe a mechanism for accepting a data value and, in response, establishing a set of default values. Instead, this passage merely describes a mechanism for generating a prompt in order to obtain a data value from the user. The cited passage at col. 7, lines 42-46 cited with respect to the recitation in claims 4 and 11 that a "gathering type" consists of an occasion type and a theme associated with the occasion type has no discernable relevance to anything claimed.

Ground 5 (claims 6 and 10): The Examiner contends, on page 6, that Maurille describes a system in which the web server that implements the online gathering acts as an application service provider which operates in collaboration with one or more other web servers, citing Maurille at col. 5, line 55 through col. 6, line 12. The cited passage describes the components of the system as depicted in Fig 1 and describes only one web server, and suggests no mechanism for collaboration between web servers as claimed. The passage does not suggest that the web server acts as an application service provider. Although "active server pages" and "applications service providers" are both commonly referred to by their initials "ASP," they are

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in no sense the same thing. It is submitted that no disclosure in the cited passage of Maurille supports the rejection of claims 6 and 10.

Conclusion

The Board is respectfully requested to reverse the Examiner's rejection of claims 1-12 under 35 U.S.C. §103(a) as being directed to subject manner which the Examiner asserts to be obvious in view of the teachings of the cited art.

Claims appendix.

An appendix containing a copy of the claims involved in the appeal is attached.

Respectfully submitted,

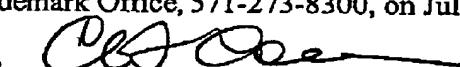Dated: July 26, 2005   Charles G. Call, Reg. 20,406

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this *Appellants' Brief* is being transmitted by facsimile to the central facsimile number of the U.S. Patent and Trademark Office, 571-273-8300, on July 26, 2006.

Dated: July 26, 2005   Signature _____

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CLAIMS APPENDIX

1. The method of using the Internet to create and host a customized online gathering of participants which occurs at a scheduled time comprising, in combination, the steps of:

providing at least one server computer connected to the Internet for communicating with a plurality of client computers operated by users which are also connected to the Internet,

storing at said server computer:

a)   template data defining one or more template web pages, each of said template web pages implementing a predetermined activity in which said users may participate as part of said online gathering,

b)   an identification of said first user as the host of said online gathering,

c)   a guest list accepted from said first user identifying a plurality of other invited users,

d)   a specification of a scheduled time or scheduled time range during which the online gathering will occur, and

e)   customization data accepted from said first user,

combining said template data and said customization data to create customized web pages which together implement said customized online gathering,

establishing at said scheduled time or during said scheduled time range an authorized connection via the Internet between said server computer and each of said invited users that choose to participate in said gathering and,

responding to requests received from any given one of said invited users during said online gathering by transmitting to said given user one a requested one of said customized Web pages.

2. The method as set forth in claim 1 wherein said guest list includes the email addresses of at least some of said other users and further including the step performed before said scheduled time or scheduled time range of transmitting an invitation to said gathering to each of said email addresses.

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3. The method as set forth in claim 1 wherein said customization data accepted from said first user includes the designation of a gathering type and wherein, in response to said designation of said gathering type, said server computer automatically establishes a set of predetermined default values for said customization data which are combined with said template data to produce preliminary customized pages.

4. The method as set forth in claim 3 wherein said gathering type is designated by the combination of an occasion type and a theme associated with said occasion type.

5. The method as set forth in claim 3 further including the steps of accepting from said first user replacement attribute values which may be substituted for particular ones of said default values to modify said preliminary customized pages.

6. The method as set forth in claim 1 wherein said at least one server computer comprises a first server which acts as an application service provider for presenting said Web pages to users who access at least some of said Web pages using addresses supplied by a collaborating server computer.

7. The method as set forth in claim 1 wherein at least a given one of said template web pages implements an activity in which said invited users may communicate with one another, said method including the further steps of accepting contributed data from one or more of said other invited users, storing said contributed data on said server computer, and thereafter displaying at least selected contributed data as part of said given one of said Web pages.

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8. The method of creating and hosting scheduled online gatherings of participating users which comprises, in combination, the steps of:

providing a web server for exchanging information via the Internet with a plurality of remotely located web browsers each of which is operated by one of said users;

storing template data accessible to said web server, said template data including a plurality of template web pages at least one of which implements an interactive activity in which said users may participate;

accepting an application from a particular one of said users to host one or more of said online gatherings, and responsive to said application designating said particular one of said users as the host of at least at least one specific online gathering;

accepting from said host customization data for modifying or supplementing one or more of said template web pages to produce customized web pages to be transmitted from said Web server to said users during said specific online gathering,

accepting from said host a designation of the time or times when said specific online gathering is scheduled to occur;

prior to said time or times when said specific online gathering is scheduled to occur, transmitting an invitation to participate in said specific online gathering to each of said users, said invitation including the specification of said time or times and the URL of at least one of said Web pages;

at said time or times designated by said host, employing said Web server to host said online gathering by making said customized web pages available to said users.

9. The method of creating and hosting customized online gatherings as set forth in claim 8 further the steps, performed prior to said time or times when said specific online gathering is to occur, of:

accepting from said host guest list data including the email addresses of a plurality of guest users who are to be invited to participate in said specific online gathering, and

thereafter transmitting said invitation to attend said specific online gathering to each of said email addresses.

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10. The method of creating and hosting customized online gatherings as set forth in claim 8 wherein said web server operates in collaboration with one or more other web servers.

11. The method of creating and hosting customized online gatherings as set forth in claim 8 wherein said customization data includes the designation of a chosen theme for said specific online gathering and wherein said customized web pages are selected from said plurality of said template web pages in accordance with said designation to implement said chosen theme for said online gathering.

12. The method of creating and hosting customized online gatherings as set forth in claim 8 wherein said customization data includes the designation of one or more of said interactive activities to be made available to said participating users as part of said specific online gathering.

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